

HBG, PATENT

United States District Court
Middle District of Pennsylvania (Harrisburg)
CIVIL DOCKET FOR CASE #: 1:11-cv-00437-WWC
Internal Use Only

Smith v. Kongsberg Defense Corporation
Assigned to: Honorable William W. Caldwell
Cause: 35:271 Patent Infringement

Date Filed: 03/08/2011
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff**Dr. Thomas Smith**

represented by **David J. DeToffol**
DeToffol & Associates
35th Floor
30 Broad Street
New York, NY 10004
212-962-2220
ATTORNEY TO BE NOTICED

Kathryn L. Simpson
Mette, Evans & Woodside
3401 North Front Street
P.O. Box 5950
Harrisburg, PA 17110-0950
717-232-5000
Email: klsimpson@mette.com
ATTORNEY TO BE NOTICED

V.

Defendant**Kongsberg Defense Corporation**

Patent #
5,970,024
6,215,731
6,621,764

Date Filed	#	Docket Text
03/08/2011	<u>1</u>	COMPLAINT against Kongsberg Defense Corporation (Filing fee \$350, Receipt Number 0314-2121485), filed by Thomas Smith. (Attachments: # <u>1</u> Civil Cover Sheet)(dc) (Entered: 03/08/2011)
03/08/2011		Summons Issued as to Kongsberg Defense Corporation and provided to Attorney for service on Defendant(s). (dc) (Entered: 03/08/2011)
03/08/2011	<u>2</u>	Letter from Clerk's Office to Commissioner of Patents and Trademarks with copy of complaint and docket sheet. (dc) (Entered: 03/08/2011)

Respectfully submitted,

METTE, EVANS & WOODSIDE

s/Kathryn L. Simpson

By: _____

KATHRYN L. SIMPSON, ESQUIRE

Sup. Ct. I.D. No. 28960

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Date: March 8, 2011

JS 44 (Rev. 12/87)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DR. THOMAS SMITH

(b) County of Residence of First Listed Plaintiff York, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Kathryn L. Simpson, Mette, Evans & Woodside
3401 N. Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950

DEFENDANTS

KONGSBERG DEFENSE CORPORATION

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROFESSIONAL FEES <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

- (Place an "X" in One Box Only)
☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

35 U.S.C. § 101 et seq.; 35 U.S.C. § 271 et seq.

Brief description of cause:

Action for patent infringement

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

In excess of \$75,000

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

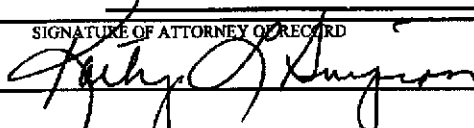
JUDGE

DOCKET NUMBER

DATE

03/08/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

MAG. JUDGE



MARY E. D'ANDREA
Clerk of Court

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF PENNSYLVANIA

U.S. Courthouse
228 Walnut Street, Rm. 1060
P.O. Box 983
Harrisburg, PA 17108-0983

(717) 221-3920
FAX (717) 221-3959

March 8, 2011

Commissioner of Patents
and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Re: Dr. Thomas Smith v. Kongsberg Defense Corporation
1:11-CV-437

Dear Commissioner:

In compliance with 35 U.S.C. Sec. 290 and/or 15 U.S.C. Sec. 1116 enclosed is a copy of the docket entries and complaint which was filed in the United States District Court for the Middle District of Pennsylvania.

Sincerely yours,

Mary E. D'Andrea
Clerk of Court

By: s/Darlene F. Cramer
Deputy Clerk

METTE, EVANS & WOODSIDE
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klsimpson@mette.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DR. THOMAS SMITH,	:	
Plaintiff,	:	
	:	CASE NO.
v.	:	
	:	JURY TRIAL DEMANDED
KONGSBERG DEFENSE	:	
CORPORATION,	:	
Defendant.	:	

COMPLAINT

Nature of the Action

1. This is an action by Plaintiff Dr. Thomas Smith for patent infringement against the defendant Kongsberg Defense Corporation.

The Parties

2. Plaintiff, Dr. Thomas Smith, is an individual residing in York County, Pennsylvania.

3. Defendant Kongsberg Defense Corporation ("Kongsberg") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a registered office at 210 Industrial Park Road, Johnstown, PA 15904.

Jurisdiction and Venue

4. This action arises under the Acts of Congress relating to patents, 35 United States Code § 101 *et seq.*, for damages and injunctive relief pursuant to 35 United States Code § 271 *et seq.*

5. This Court has subject matter jurisdiction under provisions of Title 28 United States Code § 1338(a).

6. Venue is proper within this District under the provisions of Title 28 United States Code § 1391 (b)(2) and (c) in that a substantial part of the intellectual property that is the subject of this action is situated in this District.

Factual Background

7. Plaintiff has a doctorate in electrical engineering and is a recognized consultant engaged in the fields of, among others, the design, testing and operation of weapon machinery and detection systems.

8. The patents Plaintiff owns which form the basis for this action relate to gunfire detection and countermeasure weapon machinery and systems.

9. Plaintiff was the lead acoustics engineer on the first project team to successfully apply the principles of acoustics to design the first helicopter mounted acoustic gunfire detector, tested and utilized during hostile warfare in Vietnam from 1966 to 1969.

10. Among the honors bestowed upon Plaintiff for his work in the field of military weapon detection systems is the Johns Hopkins University Director of Applied Physics Commendation for contribution to weapon systems.

11. In 1995 Plaintiff founded New Century Engineering Inc., a Delaware corporation.

12. At that time he conceived the pioneering concept of sensor fusion, among the diverse technologies of acoustic and optics in the field of weapon machinery and systems.

13. In 1998, Plaintiff was bestowed with and quality award and commendation on topic from the engineering department of United Defense Industries of York, Pennsylvania, now named BAE Systems.

14. In essence, while acoustic sensing is accurate in detecting gunfire and the region of its origin, its ability to pinpoint in that region is limited. And while optical sensing is more prone to false alarms, and limited in compass, it excels in pinpoint precision.

15. The synergy of Plaintiff's sensor fusion innovation has been to eliminate the erstwhile disadvantages of the discrete systems and attain their combined benefits.

16. On October 19, 1999, Plaintiff's ingenuity was awarded with his first United States patent for acoustic and optical sensor fusion in the field, as well as two subsequent continuations in part patents, discussed more fully in the Counts below.

17. Upon information and belief, Defendant Kongsberg is making, offering for sale, and selling here in the United States gunfire detection and countermeasure weapon machinery and systems utilizing and established upon acoustic and optic sensor fusion, under the moniker CROWS II as well as others.

COUNT I
Patent Infringement of Patent 5,970,024

18. The averments in paragraphs 1 through 17 are incorporated.

19. On October 19, 1999, United States Letters Patent 5,970,024 (" '024 Patent") entitled "Acusto-Optic Weapon Location System and Method" was duly and legally issued to plaintiff.

20. Upon information and belief, Defendant has directly, indirectly, contributed and/or by inducement infringed the claims and patent rights of the '024 Patent in this District and elsewhere in the United States, by way of Defendant's making, offering for sale and selling the CROWS II and comparable differently named weapon systems.

21. Defendant's infringement of the said patent has injured and caused damage to Plaintiff, and will cause ongoing and added damages unless Defendant is enjoined from infringing the '024 Patent.

22. Upon information and belief, Defendant has had actual knowledge through its component suppliers and otherwise of the '024 Patent, and has willfully, deliberately and intentionally infringed said patent.

COUNT II
Patent Infringement of Patent 6,215,731

23. The averments contained in paragraphs 1 through 22 are incorporated.

24. On April 14, 1999 United States Letters Patent 6,215,731 (" '731 Patent") also entitled "Acusto-Optic Weapon Location System and Method" was duly and legally issued to Plaintiff.

25. Upon information and belief, Defendant has directly, indirectly, contributed and/or by inducement infringed the claims and patent rights of the '731 Patent in this District and elsewhere in the United States, by way of Defendant's making, offering for sale and selling the CROWS II and comparable differently named weapon systems.

26. Defendant's infringement of the said patent has injured and caused damage to Plaintiff, and will cause ongoing and added damages unless Defendant is enjoined from infringing the Patent.

27. Upon information and belief, Defendant has had actual knowledge through its component suppliers and otherwise of the '731 Patent, and has willfully, deliberately and intentionally infringed said patent.

COUNT III
Patent Infringement of Patent 6,621,764

28. The averments contained in paragraphs 1 through 27 are incorporated.

29. On September 16, 2003 United States Letters Patent 6,621,764 (" '764 Patent") entitled "Weapon Location By Acusto-Optic Sensor Fusion" was duly and legally issued to the Plaintiff.

30. Upon information and belief, Defendant has directly, indirectly, contributed and/or by inducement infringed the claims and patent rights of the '764 Patent in this District and elsewhere in the United States, by way of Defendant's making, offering for sale and selling the CROWS II and comparable differently named weapon systems.

31. Defendant's infringement of the said patent has injured and caused damage to Plaintiff, and will cause ongoing and added damages unless this defendant is enjoined from infringing the '764 Patent.

32. Upon information and belief, Defendant has had actual knowledge through its component suppliers and otherwise of the '764 Patent, and has willfully, deliberately and intentionally infringed said patent.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment that:

1. Defendant has directly, indirectly, contributed and/or by inducement infringed United States Letters Patent Nos. 5,970,024, 6,215,731, and 6,621,764.
2. Defendant and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, is/are enjoined from infringing, inducing others to infringe, or contributing to the infringement of United States Letters Patent Nos. 5,970,024, 6,215,731, and 6,621,764.
3. Defendant is ordered to account for and pay Plaintiff the damages that Plaintiff is entitled as a consequence of the infringement;
4. Treble damages be awarded for the willful, deliberate and intentional infringement of the defendant as alleged in the Complaint;
5. Plaintiff be awarded costs and attorneys' fees herein in accordance with 35 U.S.C. § 285; and
6. Plaintiff be awarded such other and further relief as this Court deems just and equitable.